

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36293/36325

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 736
	)	
Plaintiff-Respondent,	)	Filed: December 17, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
DEYBER PRADO-CHAVEZ,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

---

Appeal from the District Courts of the Fifth Judicial District, State of Idaho, Minidoka And Cassia Counties. Hon. R. Barry Wood and Hon. Michael R. Crabtree, District Judges.

Judgment of conviction and unified sentence of eight years, with two years determinate, for burglary, affirmed; order revoking probation and executing previously imposed sentence, affirmed.

Greg S. Silvey, Kuna, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

---

Before LANSING, Chief Judge, GUTIERREZ, Judge  
and MELANSON, Judge

---

PER CURIAM

Deyber Prado-Chavez was charged with grand theft by possession and with possession of a controlled substance in case number 36325 and pursuant to a plea agreement, pled guilty to possession of a controlled substance, Idaho Code § 37-2732(c)(1), and the state agreed to dismiss the remaining charge. The district court sentenced Prado-Chavez to a unified term of seven years, with two years determinate, suspended the sentence and placed Prado-Chavez on probation for three years. Prado-Chavez subsequently violated the terms of his probation and was charged with burglary, possession of drug paraphernalia and possession of burglarious

instruments in case number 36293.<sup>1</sup> Pursuant to a plea agreement, Prado-Chavez pled guilty to burglary, I.C. § 18-1401, and the state agreed to dismiss the remaining charges. The district court sentenced Prado-Chavez to a unified term of eight years, with two years determinate, to run concurrently with his sentence in case number 36325. Prado-Chavez's probation in case number 36325 was revoked and the underlying sentence was ordered into execution. Prado-Chavez filed an Idaho Criminal Rule 35 motion for reduction of both sentences, which the district court denied. Prado-Chavez appeals, contending that the district abused its discretion by imposing an excessive sentence in case number 36293 and by revoking his probation and ordering the underlying sentence into execution in case number 36325. The cases have been consolidated for purposes of appeal.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007).

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834

---

<sup>1</sup> In case number 36293, the appellant's name appears as Deyber Chavez-Prado. This case originated in Minidoka County and was consolidated with case number 36325, which originated in Cassia County under the name of Deyber Prado-Chavez.

P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in the imposition of sentence in case number 36293 or in revoking probation and ordering the underlying sentence into execution in case number 36325. Therefore, the order revoking probation and directing execution of Prado-Chavez's previously suspended sentence is affirmed. The judgment of conviction and sentence in case number 36293 is also affirmed.